

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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REGULATORY AUTH.
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CLERK OF THE
EXECUTIVE SECRETARY

IN RE:

PETITION OF THE TENNESSEE SMALL LOCAL)	
EXCHANGE COMPANY COALITION FOR)	
TEMPORARY SUSPENSION OF 47 U.S.C. § 251(b))	DOCKET NO. 99-00613
AND 251(c) PURSUANT TO 47 U.S.C. § 251(f))	
AND 47 U.S.C. § 253(b))	

**COMMENTS OF AVR, L.P. D/B/A HYPERION OF TENNESSEE, L.P.
IN OPPOSITION TO PETITION**

AVR, L.P. d/b/a Hyperion of Tennessee, L.P. ("Hyperion"), by its undersigned counsel hereby submits its comments in opposition to the Petition ("Petition") and the Brief in Support of Petition ("Brief") filed on August 18, 1999, in the above-captioned proceeding by the Tennessee Small Local Exchange Company Coalition ("Coalition"), a group of incumbent local exchange carriers ("ILECs") providing service in Tennessee. In the Petition, the Coalition requests the suspension of most of the interconnection obligations that would otherwise apply to its members under Sections 251(b) and 251(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §§ 251(b)-(c). The relief requested in the Coalition's Petition exceeds the scope of available relief under the Act, is procedurally out of order, and fails to allege facts that would satisfy the Coalition's burden of proof with regard to such relief. Accordingly, the Petition should be dismissed.

In the Petition, the Coalition asks that the members of the Coalition receive a blanket suspension of all the requirements of Sections 251(b) and 251(c) of the Act, save only for the implementation of IntraLATA Dialing Parity Plans pursuant to Section 251(b)(3). The Coalition asserts that its members are entitled to this relief under Section 251(f)(2) of the Act.

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Section 251(f)(2) of the Act provides that “a local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines . . . may petition a State commission for suspension or modification of the application of a requirement or requirements of subsection (b) or (c)” The Tennessee Regulatory Authority (the “Authority”) is to grant the petition “to the extent that, and for such duration as,” it finds that the suspension or modification is “necessary”:

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome;
or
- (iii) to avoid imposing a requirement that is technically infeasible

Such suspension or modification must also be consistent with the public interest, convenience and necessity.

On its face this Section requires particularized allegations of fact, not sweeping generalizations, to support a request for relief. Accordingly, the Federal Communications Commission (“FCC”) regulation implementing this procedure expressly provides that determinations by state commissions whether to grant suspensions or modifications are to be made “on a case-by-case” basis. 47 C.F.R. § 51.401. In addition, the burden of proving that the elements of Section 251(f)(2) are satisfied rests squarely with the LEC seeking relief. 47 C.F.R. § 51.405.

The Coalition has failed to make any particularized showing that any one of its members will be individually harmed by imposing the requirements of Sections 251(b) and (c) on them. The fundamental premise for the Coalition’s position is its statement (Brief at 8) that “the population, economy, and other demographic factors of rural markets are such that rural markets

are generally insufficient to support true, universally available competition.” The remainder of its arguments elaborate on this theme.¹

These allegations are facially insufficient to meet the Act’s requirement that particularized harm be shown on a case-by-case basis. The FCC has made clear that such a showing must consist of “evidence that application of [the Section 251(b) and (c)] requirements would be likely to cause *undue* economic burdens *beyond the economic burdens typically associated with efficient economic entry.*” *Local Competition Provisions of the 1996 Telecommunications Act, First Report and Order*, 11 FCC Rcd 15499 at ¶ 1262 (1996) (“*FCC Implementation Order*”) (emphasis added). This conclusion is inherent in the structure of the Act. If Congress had agreed with the Coalition’s premise that rural markets are inherently, and for all time, not amenable to local exchange competition, it would have enacted a permanent exemption for all rural LECs, rather than to provide for case-by-case determinations that are to be expressly limited in time. The Coalition’s assertions relate to the burdens any incumbent faces when met with efficient competitive entry, not to any unusual harm above and beyond such burdens caused by the particular circumstances facing any individual ILEC. As such, the Petition does not satisfy the Act’s requirements, and should be rejected.

¹ For example, the Coalition broadly asserts (Brief at 7) that “The introduction of competition to the rural areas served by the Petitioners . . . will threaten both the ubiquitous provision of service and the comparable rates at which service is provided.” It goes on (Brief at 7-11) to assert that new competitors will engage in “cream-skimming” to the detriment of the ILEC if the new competitors are allowed to interconnect, and that permitting resale is dangerous because “a competitor could utilize resale as a means of conducting free market research.” These assertions may or may not be true for individual LECs. Without a company-by-company investigation, the Authority cannot properly apply the federal waiver standard.

As it relates to Section 251(c), the Petition may be faulty for another reason: based on the facts alleged in the Petition, the waiver request is premature. To the extent that the Coalition's members qualify as "rural LECs" under the Act,² pursuant to Section 251(f)(1)(A) of the Act, they are already exempt from the requirements of Section 251(c) unless and until another carrier makes a bona fide request for interconnection, services, or network elements. Then, and only then, the Authority is to make a determination as to whether the *specific request* "is not unduly economically burdensome, is technically feasible, and is consistent with section 254. . . ." Both the Act and the FCC's implementing order are quite clear that this determination *must* be made whenever a request is made, on a case-by-case basis. And, as the FCC has made plain, the burden of proof is on the ILEC to show why such a request should not be granted. *See FCC Implementation Order* at ¶ 1263. The Coalition's Petition does not allege that any of its members has received a request for interconnection. In the absence of such a request, it would be premature for the Authority to consider granting a waiver of the requirements of Section 251(c).³

² The Coalition's filing (Petition at 2) contains only a conclusory allegation that each of its members is a rural LEC for purposes of Section 251(f)(1).

³ The Coalition asserts that the Authority should establish a moratorium on entertaining such requests for purposes of administrative convenience. (Brief at 11.) This too would be beyond the scope of the Authority's powers under the Act, and the Coalition does not cite any statutory or other authority for its contrary position.

Hyperion itself has made no request for interconnection and should not be precluded from making a request from this premature filing.


CONCLUSION

For the reasons stated above, the Coalition's Petition should be dismissed or denied. If any individual LEC wishes to seek relief under the Act, the carrier may individually re-file its waiver request as contemplated by the statute and the FCC's rules.

Dated this 29th day of September, 1999.

Respectfully submitted,

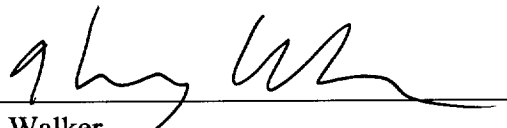
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CERTIFICATE OF SERVICE

I, Henry Walker, hereby certify that I have served a copy of the foregoing Petition to Intervene on the following this 29th day of September, 1999.

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Henry Walker